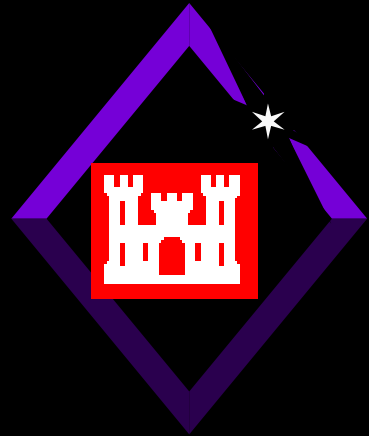


# **USACE LEGAL SERVICES WORKSHOP**

**DOUG LAMONT**

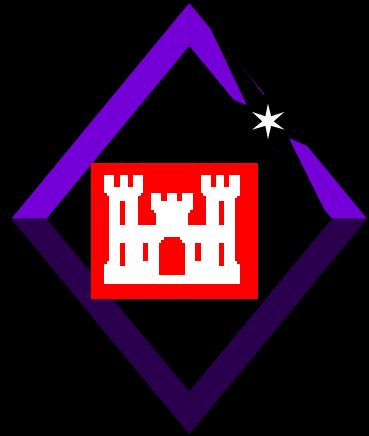
**POLICY REVIEW BRANCH**



## **- IN - KIND POLICY GUIDANCE**

22 Jul 87, CECW-P Memo, Subject:  
Work-in-Kind in Lieu of Cash

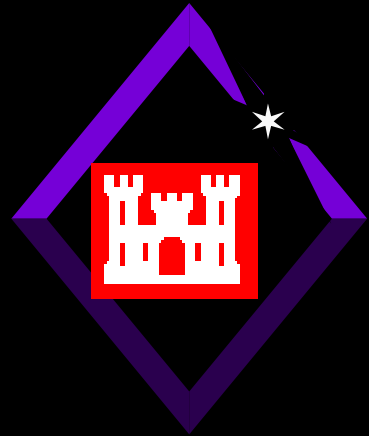
- ◆ In accordance with WRDA '86, established CW policy that where the law required non-Federal cash contributions, work-in-kind could not be substituted for specifically authorized and CAP projects



## **WORK - IN - KIND POLICY GUIDANCE**

22 Jul 87, CECW-P Memo, Subject:  
Work-in-Kind in Lieu of Cash

- ◆ Recognized special provisions that would authorize credit or reimbursement under Section 215 (FCA of 1968); Sections 104, 203, and 204 of WRDA '86

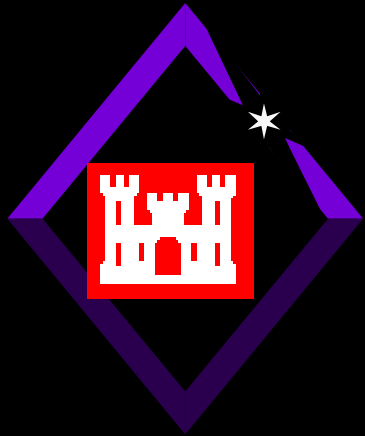


## **WORK - IN - KIND POLICY GUIDANCE**

22 Jul 87, CECW-P Memo, Subject:

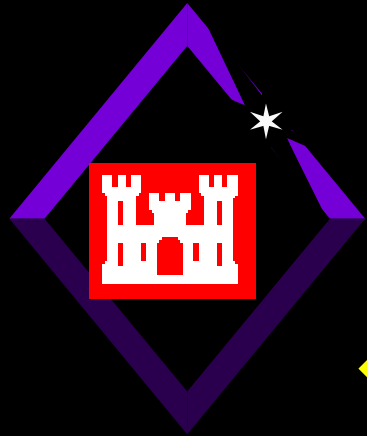
Work-in-Kind in Lieu of Cash

- ◆ Recognized Section 105(a) of WRDA '86 wherein not more than one-half of non-Federal contribution for studies may be made by in-kind services



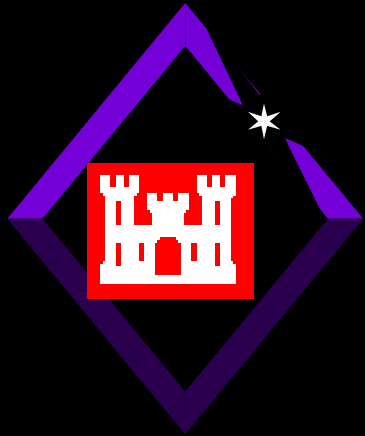
6 Mar 91 CECW-LM/CECW-PR Memo,  
Subject: Project Management Guidance Letter  
No. 10, Credits for Work-in-Kind Performed by  
Non-Federal Sponsors

- ◆ Identified authorities in which construction as well as engineering and design, can be performed by non-Federal
  - ◆ Sec. 215 of the 1968 Flood Control Act, as amended
  - ◆ Sec. 104 of WRDA '86 (for flood control)
  - ◆ Sec. 204 of WRDA '86 (for harbor projects)
  - ◆ Sec. 4 of Flood Control Act of 1944, as amended (for recreation facilities)
  - ◆ Or other limited or project-specific authority



## ◆ Audit Requirements:

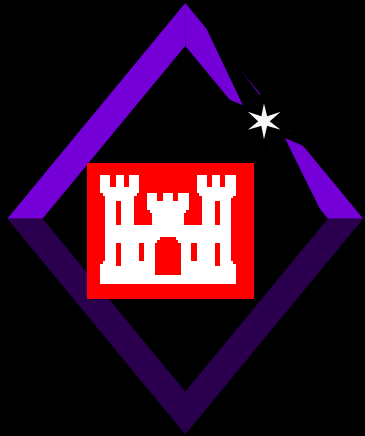
- ◆ Any credit/reimbursement limited to the
  - ◆ Actual costs that are auditable, allowable, and allocable
  - ◆ Government's estimate of the cost of work allocable to the project had the Government performed the work, or
  - ◆ In the case of Sec. 104 credits, the estimated reduction in the cost of remaining project



## ◆ **Audit Requirements:**

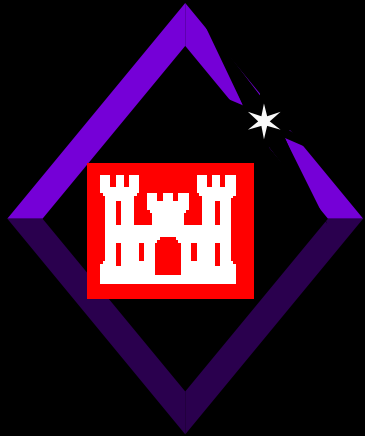
- ◆ No adjustments for price levels
  - ◆ Cost or cost reduction computed using same price levels in effect at the time non-Federal work is performed

# REIMBURSEMENTS



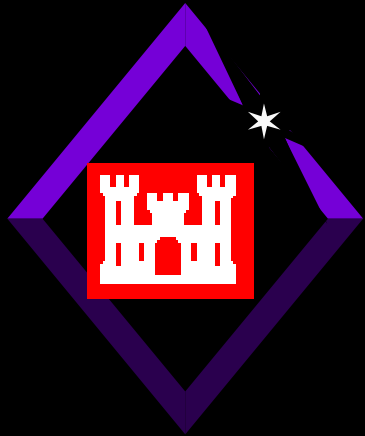
- ◆ General policy is to provide credit first against sponsor's LERR(D) requirements or additional cash required
- ◆ With current budgeting climate not as easy as in the past
  - ◆ Affected by OMB budget ceilings, other competing project priorities, and availability of appropriations
  - ◆ Most notably, new Congressionally-added projects





## REIMBURSEMENTS

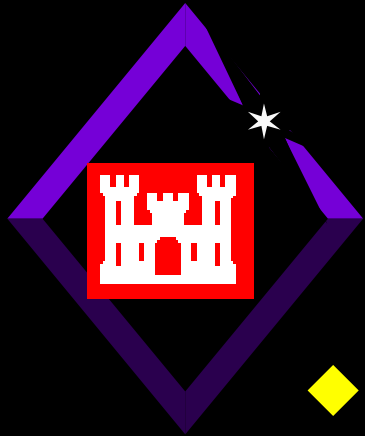
- ◆ As a result of 54 new construction projects added by Congress in FY 1998
- ◆ Administration concerned over growing liability of Corps projects
- ◆ OMB directed Corps to enter into only lump sum contracts for Congressional and the 12 projects contained in the President's budget



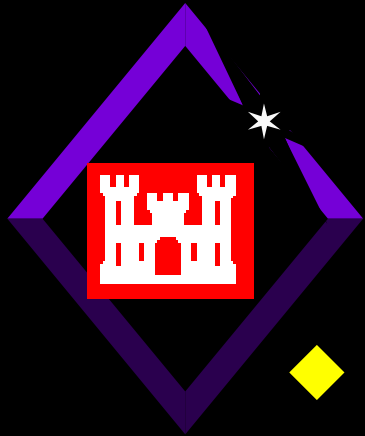
## Congressional Concern

- ◆ Conference Report (House Report 105-271) accompanying FY98 Energy and Water Development Appropriations Act
- ◆ Conferees concerned about funding implications of projects Sec Army approves for construction by non-Federal sponsors under reimbursement authorities, including Sec. 211 WRDA '96

# Congressional Concern



- ◆ Concern with competing funding demands for reimbursement vs. on-going Federal construction projects nationwide
- ◆ Sec Army directed to notify House & Senate Appropriations Committees prior to initiating negotiations on reimbursement



## Congressional Concern

- ◆ Notification to include total commitment and annual requirement the Administration proposes to support
- ◆ Expected that reimbursement would be on an incremental basis and on a schedule consistent with a Federal construction schedule